

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

2003 MAR 26 PM 2:13  
CLERK OF COURT

BONNIE SHORT, INDIVIDUALLY AND  
AS PERSONAL REPRESENTATIVE OF  
THE ESTATE OF JOHNNY P. SHORT, SR.,

v.

GENERAL DYNAMICS CORPORATION

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CIVIL ACTION NO. \_\_\_\_\_

**4-03 CV - 216 - Y**

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1441, 1442 and 1446, Defendant General Dynamics Corporation ("General Dynamics") files this Notice of Removal and hereby removes the action styled *Bonnie Short, et al. v. General Dynamics Corporation*, No. 342-197624-03, from the 342<sup>nd</sup> Judicial District Court of Tarrant County, Texas, to the United States District Court for the Northern District of Texas, Fort Worth Division. An Index of All Documents is attached to this Notice of Removal, and attached to that Index are: an original and one true and correct copy of a completed civil cover sheet, an original and one true and correct copy of a supplemental civil cover sheet, a true and correct copy of the state court docket sheet, true and correct copies of each document filed in the state court action, and a certificate of interested persons. The grounds for this removal are as follows:

**I.  
BACKGROUND**

Plaintiff Bonnie Short ("Ms. Short") is a resident and citizen of Texas. Ms. Short sued General Dynamics individually and as personal representative of the heirs and estate of Johnny P. Short, Sr. ("Mr. Short"). Ms. Short alleged that Mr. Short was "fatally exposed to dust containing asbestos fibers" while working for General Dynamics as a laborer. Ms. Short further claims that General Dynamics' alleged negligence, gross negligence, fraud, deceit, misrepresentations, defective

products, and intentional infliction of emotional distress proximately caused her damages and Mr. Short's lung cancer and death.

Ms. Short claims damages for the following on behalf of the decedent: wrongful death, pain and suffering, mental anguish, physical impairment and disfigurement suffered by Mr. Short prior to his death, medical expenses, funeral and burial expenses, and lost earnings and net accumulations. On her own behalf, Ms. Short claims damages for the following: mental anguish, loss of care, maintenance, services, support, advice, counsel, and consortium. On Mr. Short's heirs' behalf, Ms. Short claims damages for mental anguish. Ms. Short further seeks punitive and exemplary damages.

## II. JURISDICTION AND VENUE

This Court has federal question jurisdiction in this case. 28 U.S.C. § 1331.

### (A) Federal Question Jurisdiction

Mr. Short worked for General Dynamics at Air Force Plant No. 4 in Tarrant County, Texas. Until about March 1, 1993, Air Force Plant No. 4 was occupied by General Dynamics to manufacture and assemble military aircraft for the United States Government. Beginning about March 1, 1993, it has been used for that purpose by Lockheed Corporation and subsequently and currently by Lockheed Martin Corporation. Prior to and during Mr. Short's employment at Air Force Plant No. 4, and at all times subsequent thereto, it has been and still is a federal enclave within which the United States has exclusive jurisdiction, having been acquired by the United States for the purposes provided for under the U.S. Constitution, Article I, Section 8, cl. 17. The State of Texas executed and delivered a deed dated December 30, 1942 ceding exclusive jurisdiction to the United States of America over the land on which Air Force Plant 4 is located. A copy of the January 18, 1943 letter from the Secretary of War to the Governor of Texas accepting such cession of jurisdiction is attached hereto as **Exhibit A**. See also the following cases, of which this court may take judicial

notice: *Bd. of Equalization v. Gen. Dynamics Corp.*, 344 S.W.2d 489, 490, 492 (Tex. Civ. App.—Fort Worth 1961, writ ref'd n.r.e.); *Cooper v. Gen. Dynamics*, 378 F. Supp. 1258, 1260-61 (N.D. Tex. 1974), *rev'd and remanded on other grounds*, 533 F.2d 163, 165 (5th Cir. 1976); *Vincent v. Gen. Dynamics Corp.*, 426 F. Supp. 786, 794-96 (N.D. Tex. 1977).

The above-styled and numbered personal injury and wrongful death action arises from alleged incidents occurring in Air Force Plant No. 4 and may be removed to federal district court under federal question jurisdiction. *Akin v. Ashland Chem. Co.*, 156 F.3d 1030, 1034 (10th Cir. 1998), *citing Mater v. Holley*, 200 F.2d 123 (5th Cir. 1952).

This case may also be removed based on the status of General Dynamics as a “person acting under” a federal officer, as provided for in 28 U.S.C. § 1442(a)(1). *Akin*, 156 F.3d at 1034-35.

General Dynamics has removed numerous other cases on the same grounds, and those cases are currently pending as part of Multi-District Litigation No. 875.

### **III. TIMELINESS OF REMOVAL**

General Dynamics was served on March 10, 2003. Therefore, pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely filed. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999).

### **IV. SERVICE AND FILING IN STATE COURT**

On March 27, 2003, General Dynamics will (i) serve Plaintiff with written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(b), and (ii) file a copy of this Notice of Removal with the Clerk of the 342<sup>nd</sup> Judicial District Court of Tarrant County, Texas, where the action is currently pending.

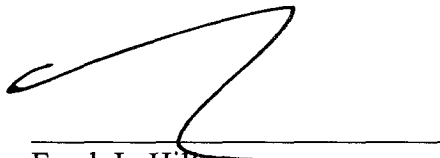
**V.  
CONCLUSION**

Pursuant to, and in conformance with, federal law, General Dynamics removes this action from the 342<sup>nd</sup> Judicial District Court, Tarrant County, Texas.

Respectfully submitted,

THOMPSON & KNIGHT LLP

By:

  
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ATTORNEYS FOR DEFENDANT  
GENERAL DYNAMICS CORPORATION

**CERTIFICATE OF SERVICE**

This is to certify that on the 27<sup>th</sup> day of March, 2003, a true and correct copy of the foregoing was served on Michael E. Hissey, Tim Herron, and Sheila Ford Henderson, Hissey, Kientz, & Herron, P.L.L.C., 16800 Imperial Valley Drive, Suite 130, Houston, Texas 77060; and Ian Cloud, Robins, Cloud, Greenwood & Lubel, LLP, 910 Travis, Suite 2020, Houston, Texas 77002, by certified mail, return receipt requested.

  
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Frank L. Hill